LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAR 23 1958
JOHN T. FEY, Clerk

No. 827

In the Supreme Court of the United States

OCTOBER TERM, 1957

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL–CIO, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

JEROME D. FENTON,
General Counsel,
THOMAS J. McDERMOTT,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
MELVIN POLLACK,
Attorney,
National Labor Relations Board,
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
A. The Board's findings of fact	2
B. The Board's decision and order	5
C. The decision of the court below	7
Argument	7
Conclusion	8

CITATIONS

Cases:	
Truck Drivers & Helpers v. *National Labor Relations Board*, 249 F. 2d 512, certiorari denied March 3, 1958, No. 736, this Term	7
Statute:	
National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*)	
Section 8 (b) (4) (A)	7
Section 8 (b) (4) (B)	7

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 827

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL–CIO, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. 15–16) is not yet reported. The Board's findings of fact, conclusions of law, and order (R. 17–21) are reported at 117 NLRB 885.

JURISDICTION

The judgment of the court below (R. 56) was entered on January 23, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that, in the circumstances of this case, the Union, by picketing at a place where both employees of the employer involved in a dispute with the Union and employees of a secondary employer not involved in the dispute were present, induced and encouraged the employees of the latter to engage in work stoppages in violation of Section 8 (b) (4) (A) and (B) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth at pp. 3–4 of the Petition.

STATEMENT

A. *The Board's findings of fact.* The Board found that petitioners, by picketing at the New Orleans Port of Embarkation while trucks of Diaz Drayage Company were there, sought to induce and encourage the employees of Ryan Stevedoring Company not to handle oil delivered in Diaz' trucks, in order to disrupt Diaz' business relations with its customers and so force Diaz to deal with the Union which was not certified as the collective bargaining representative of its employees. The Board based its conclusion upon the following undisputed facts:

In July 1956, the Union's secretary-treasurer, James Peter Schwehm, requested the Diaz partners, Robert L. Diaz, Jr., and Warren G. Diaz, Sr., to recognize the Union as the bargaining agent for their

truck drivers and helpers, and presented a contract (R. 25–26). The Diaz brothers refused Schwehm's request (R. 26).

On August 1, 1956, Diaz having persisted in its refusal to deal with the Union, Schwehm stationed a picket at the Diaz office and garage, and also stationed a picket at the entrance to the New Orleans Port of Embarkation, an Army facility for the receipt and shipment of military materials (*ibid.*). The pickets were instructed to speak to no one but, if questioned, to hand out a leaflet, reading (*ibid.*):

> THIS PICKET IS DIRECTED AT THE EMPLOYEES OF DIAZ DRAYAGE CO. WE ARE ATTEMPTING TO ORGANIZE THE EMPLOYEES OF DIAZ DRAYAGE CO. THIS IS ALL I CAN TELL YOU ACCORDING TO LAW.

The pickets carried signs, stating (*ibid.*):

> ORGANIZATIONAL
> PICKET
> DIAZ DRAYAGE CO.
> NON-UNION
> DIAZ EMPLOYEES
> JOIN OUR UNION
> FOR BETTER WAGES AND
> WORKING CONDITIONS
> GEN. TRUCK DRIVERS LOCAL 270
> A. F. L. C. I. O.

The picketing at the Diaz office and garage continued until August 3, on which date the Union was restrained from further picketing by a State court injunction (R. 28).[1] The picketing, before it was

[1] This injunction was dissolved on August 13 (R. 28).

restrained, reached all Diaz truck drivers and helpers, who spent from 5 to 7 minutes at the premises to pick up their keys in the morning and to depart with their trucks, and about 15 minutes to return their trucks in the afternoon and to get them ready for the next morning's departure (R. 31).

The picketing at the Port of Embarkation prevented the unloading of all Diaz trucks. About 90 percent of the Diaz business is hauling oil from the premises of oil suppliers to the port (R. 31). Diaz trucks are checked and unloaded by employees of the Ryan Stevedoring Company, who are represented by Local 1655, International Longshoremen's Association, Independent (R. 26, 28–29). The Union's president, Charles D. Winters, acknowledged that Local 1655 had previously respected the Union's picket lines at the Port of New Orleans (R. 34).[2] Consistent with this practice, Ryan's employees refused to check and unload Diaz trucks on August 1 and 2 because of the picket stationed by the Union while the Diaz trucks were present at the port (R. 28–30). These employees were assigned to other work by Lawrence King, Ryan's clerk in charge of dock unloading operations and a member of Local 1655 (*ibid.*). Earl Dennies, Local 1655's president, was summoned to the dock by King, upon the initial refusal of Ryan's employees to unload Diaz trucks, but did not interfere with the employees' decision not

[2] James Schwehm, another Union official, testified that respect for picket lines was a general policy and was expected of all local unions in New Orleans (R. 34).

to work on those trucks (*ibid.*). The Union for its part made no effort to disabuse Ryan's employees of the notion that the picketing was to encourage them to cease servicing Diaz trucks (R. 18, 39).

As related, the Union's picketing was restrained by a State court injunction issued on August 3 and dissolved on August 13. On the latter date, the Union's president, Charles D. Winters, received a call from R. H. Maxwell, an official of the Delta Petroleum Company, Diaz' principal customer (R. 33). Maxwell urged Winters not to resume picketing at the port until Delta oil had been unloaded from Diaz' trucks at or en route to the docks (*ibid.*). If Winters agreed, Maxwell promised to urge Delta to use other truckers so long as the Union continued to picket Diaz (*ibid.*). Winters consented to Maxwell's request (*ibid.*).

The Union did not thereafter resume its picketing at the Port of Embarkation. On August 17, the United States District Court for the Eastern District of Louisiana, on petition of the General Counsel of the National Labor Relations Board pursuant to Section 10 (1) of the Act, entered a temporary restraining order enjoining such picketing. Pursuant to the statutory scheme, this order was dissolved following issuance of the Board's Decision and Order (No. 6048, D. C. E. D. La.) (R. 28).

B. *The Board's decision and order.* The Board, after considering the entire record in the case, concluded that the Union's picketing at the New Orleans Port of Embarkation was aimed at the employees of

Ryan Stevedoring Company, in violation of Section 8 (b) (4) (A) and (B) of the Act. In so finding, the Board adopted the Trial Examiner's findings and conclusions and noted the circumstances supporting his analysis of the record (R. 18–19):

> In agreeing with the Trial Examiner, we adopt his analysis of the record as establishing that an object of the Teamsters' Picketing at the Port of Embarkation was to induce employees of Ryan Stevedoring Company to cease handling the oil delivered in Diaz' trucks in order to disrupt Diaz' business relations with its customers and thereby compel Diaz to accede to the Teamsters' demands for recognition and a contract. Thus, we note that adequate communication with all Diaz truckers was possible at the Diaz garage and office; that Local 270 could reasonably anticipate, based on past observance of its picket lines at the Port by ILA Local 1655, that Local 1655 members employed by Ryan would cease working upon the appearance of a picket regardless of the legend on the picket sign; that Local 270 made no effort to disabuse Ryan's employees of the notion that the picketing was to encourage them to cease servicing Diaz' trucks, and finally, the agreement between Winters, Local 270 president, and Maxwell of Delta Petroleum, that the latter would try to get his company to replace Diaz with another trucker in return for Winter's promise not to resume picketing at the Port after dissolution of the State injunction on August 13, 1956 until the trucks already loaded or enroute to the Port could be unloaded.

The Board's order requires petitioners to cease and desist from the unfair labor practices, and to post appropriate notices (R. 19–21).

C. *The decision of the court below.* The court below held that the Board's undisputed factual findings supported the Board's conclusion that the Union's picketing at the New Orleans Port of Embarkation "violated the secondary boycott provisions of the Act" (Pet. 16). In so doing, the court deemed itself bound by its earlier opinion in *Truck Drivers & Helpers* v. *National Labor Relations Board,* 249 F. 2d 512, certiorari denied, No. 736, this Term. Accordingly, the court enforced the Board's order (Pet. 16).

ARGUMENT

As petitioners state (Pet. 9), the question presented here is the same as in *Truck Drivers & Helpers* v. *National Labor Relations Board,* 249 F. 2d 512 (C. A. D. C.) in which this Court denied certiorari on March 3, 1958, No. 736, this Term. Here, as in No. 736, the question is whether the record adequately supports the Board's finding that the immediate target of the union's picketing at a site where both the primary employer and secondary employers were present and doing business with each other was the latter and hence in violation of Section 8 (b) (4) (A) and (B).[3] As stated in the brief in opposition in No. 736, to which we respectfully refer the Court, this issue is essentially one of fact to be

[3] While No. 736 involved a violation of only Section 8 (b) (4) (A), the underlying issue is the same with respect to both Sections 8 (b) (4) (A) and (B).

determined from all the surrounding circumstances. As in No. 736, the resolution of this issue adversely to petitioners presents no question warranting further review by the Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

JEROME D. FENTON,
General Counsel,
THOMAS J. MCDERMOTT,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
MELVIN POLLACK,
Attorney,
National Labor Relations Board.

MARCH 1958.

U. S. GOVERNMENT PRINTING OFFICE: 1958